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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,562	08/28/2003	Luis C. Contreras	Contreras #5	.7598
21035	7590	06/17/2005	EXAMINER	
GORDON K. ANDERSON 14632 PACIFIC STREET TUSTIN, CA 92780			DIXON, MERRICK L	
			ART UNIT	PAPER NUMBER
			1774	

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/650,562	Applicant(s) CONTRERAS, LUIS, ET AL	
	Examiner Merrick Dixon	Art Unit 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on election of 5-26-05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 20-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 26-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


MERRICK DIXON
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8-28-03</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The abstract of the disclosure is objected to because it includes brackets.

Correction is required. See MPEP § 608.01(b).

2. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 12, the phrase, "the wings" lacks proper antecedent basis. Applicants are requested to provide related corrections.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1,3,4,6,7,8 and 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4,8,9,10 and

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11 of U.S. Patent No. 6673413 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to extrude-coat the monofilament of the instant application as claimed, in the absence of unexpected results.

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Claims 26,28 29 are product by process claims. Product by process claims are based on product itself eventhough such claims recite process steps and thus the product in such claims are unpatentable if they are the same as, or, obvious from the product of the prior art, even if the prior product was made by different process. In re Thrope et al, 227 USPQ 964(1985). See MPEP 706.03(e).

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 26,28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by UK Patent 2060469(Ward et al).

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The cited reference teaches the claimed invention including a orientated thermoplastic monofilament – page 3, lines 80-100; page 5, lines 92-95; claim 22. concerning claims 28 and 29, the reference teaches high density polyethylene monofilament- see above; page 5, lines 17-95.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9

Claims 1,2,3,4,7,8,13,14,18,6,15,16,18,10,11,17, 19 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over UK Patent '469 in view of Feltman(US 5827461).

The primary reference to UK Patent GB 2060469 (Ward et al). teaches the basic claimed invention including a orientated thermoplastic monofilament with extruded thermoplastic coatings and gripping extension integral thereon- page 3, lines 110-112; page 1, lines 77-96; page 3, lines 7-11;page 3, lines 125-130; page 3, lines 77-103. Although the primary reference teaches gripping sections on it product(page 5, lines

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29-33), the secondary reference to Feltman more clearly shows it is known in the instant art to provide wing-like gripping sections(24) to articles such as taught by the primary reference – col 2, lines 41-46. it would have been obvious to one of ordinary skill in the art at the time the invention is made to combine the teachings of the secondary reference to Feltman and facilitate the primary reference with such wing-types portions to facilitate better gripping for the tie article . Both reference are combinable for they relate to twist tie articles. Concerning claim 2, the secondary reference teaches a pair of opposed wings in figs 1-3. Concerning claims 13, 14, the twist tie of similar dimensions in col 2, lines 47-49. Concerning claims 6,15 and 16, the secondary reference teaches similar dead fold properties in col 8, line 49- col 9, line 6. Concerning claims 7 and 8, the primary reference teaches high density polyethylene- page 5, lines 18-20; page 4, lines 14-16; Concerning claims 3 and 4, the primary reference teaches dissimilar polymers on page 3, lines 110-111. Concerning claim 18 , the primary reference teaches coextrusion on page 3, line 111. The secondary reference teaches such limitations in col 4, lines 35-39. Concerning claims 10,11,17,19 and 30 which require using both high and low density polymeric material, the secondary reference teaches same material and arrangements in col 2, lines 44-46 for its coextruded article. The secondary reference further teaches using a same rigid and flexible polymeric material in col 5, lines 55-65. It is submitted that it would have been within the skill in the art to use similar types polyethylene having both high and low densities during the practice of the patented invention in the absence of unexpected results. Additionally for reasons that it has long been held that selecting a known material for its intended use(Also, see specification,

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page 9, lines 5-10 of the instant application) is a mere obvious matter of design choice. Such selection would have been obvious to the skilled artisan. In re Leshin, 125 USPQ 416 .

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Claims 9-12,17,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent '469 in view of Kincel et al (US 6673413 B1).

The primary European Patent was discussed above, inter alia. The secondary reference to Kincel et al teaches that it is known in the art to use either or both high and low density polyethylene material – col 8, lines 23-26 in twist tie article as taught by the primary reference. It would have been obvious to one of ordinary skill in the art at the time the invention is made to combine the teachings of the secondary reference to Kincel et al and facilitate such high/low density polyethylene material selections for the respective portions of the twist tie of the primary reference, in the absence of unexpected results and additionally to impart desired characteristics thereto.

Concerning claim 12, the secondary reference teaches the claimed thickness in col 8, lines 22-24. concerning claim 9, both reference teach treating its respective articles via similar means- see references. It is submitted that discovering the optimum or workable range of said operation, would have been obvious and involves only routine skill in the art. In re Aller, 105 USPQ 233. concerning claims 10,11,17 and 19, the secondary reference teaches low density polyethylene- col 8, lines 23-26.

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Applicants who wish to send a facsimile (draft copies) for the examiner's immediate review can do so by using the Examiner's personal fax number at 571-273-1520. The faxing of all papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989). **NOTE: All facsimiles sent to the examiner's**

personal fax number should be in draft-forms and will be treated as informal.

Same facsimiles will not be entered in the related applications unless otherwise agreed and noted by the examiner.

The fax number for all other fascimile is 703-872-9306.

Information about **the status of an application** may be obtained from the Patent Information Retrieval system (**Private PAIR**).

Status inquires for **published applications** may be retrieved from either **Private PAIR** or **Public PAIR**. Questions about the PAIR system should be directed to the Electronic Business Center at **866-217-9197**.

Any questions concerning the instant communication should be directed to Examiner Dixon, at 571-272-1520, Mondays to Thursdays, between 12 noon and 8 PM, eastern time . The examiner's supervisor, Mrs. Rena Dye, can be reached at 571-272-3186.



**MERRICK DIXON
PRIMARY EXAMINER**